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BAR BULLETIN

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NEED FOR MODERNIZED PHILOSOPHY

THE modernization and remodeling of BAR BULLETIN and its editorial policies suggests a sequel. There is a crying need for a modernized and remodeled philosophy and attitude on the part of the members of the Bar. This is particularly true with respect to the problem of the control of the administration of quasi judicial boards and bureaus, both Federal and State.

This new philosophy and attitude should be and must be evidenced by a more militant interest in and a more intensive study of the questions arising out of practice before, and the review of the decisions of, such administrative bodies. There is a challenge issuing to all attorneys out of this problem and out of its companion problem, the unauthorized practice of the law. There are over 130 Federal administrative bodies, the membership of which is largely composed of laymen, and there is an ever increasing number of lay "practitioners" appearing before these boards or bureaus in a representative capacity.

The seriousness of the problem of the unauthorized practice of the law has been forcibly presented to us in a constantly increasing stream of discussion, prophetic writing, and reported summaries of judicial decisions.

How may we of the Bar meet this challenge? Certainly not by loud cries in the market place that we, as holders of the sceptre of the law by divine right, are being robbed of our birthright by scheming politicians and a misunderstanding and apathetic public.

The Members of the Bar, individually and collectively, must recognize and study these problems *now*. We must cooperate with all recognized agencies of the local, state, and national Bars in their program. This program has a dual aspect. The primary goal is the safeguarding of the public welfare and interest through the promotion of standardized ethical practices and the devising of adequate appellate control of administrative bodies. Another desired end is the strengthening of the legal profession itself through higher standards of admission to practice, greater emphasis on specialized study and preparation, and a more rigid limitation upon, and circumscription of, the unauthorized practice of law.

The problem has its political aspect, yet its implications and its ultimate solution are not the burden or the prerogative of any one party, group, or political subdivision. It has its economic aspect, both in the protection of the client and the public at large, from arbitrary decisions of biased boards, and in the preservation to the lawyer of his right and ability to earn and collect reasonable fees for his services.

BAR ASSOCIATION'S POST ADMISSION EDUCATIONAL PROGRAM REVIEWED

THE first undertaking by the Los Angeles Bar Association to present a Post Admission Educational Program to members of the Bar is about to be concluded. The lecture series constituting the program was inaugurated late in 1937, under the sponsorship of Loyd Wright, then President of the Association, and has been carried to a successful conclusion under the administration of President Frank B. Belcher, and the splendid direction of J. C. Macfarland, Chairman of the committee in charge.

In general, the purpose has been to recognize and meet the apparent need of members of the Bar to review legal principles applicable to fields in which they have not specialized, yet have frequent occasion to practice, and to acquire a workable understanding of new principles of law which have recently become important to all practitioners. Members of the Bar are constantly reminded of the far-reaching changes in many branches of the law which have occurred since their admission to practice.

It is strange, indeed, that the Bar has been slow and indifferent, compared to other professions, in formulating and giving effect to suitable plans under which its members may keep abreast of changes in the field of law.

PLAN WIDESPREAD

It is reassuring that a Post Admission Educational Program is engaging increasingly the attention of the Bar all over the country. Beginning as a private enterprise in New York City, the movement has extended to many state and local associations. The growth of the plan is the subject of an informative article by Will Shafroth, Adviser to the Department of Legal Education and Admissions to the Bar, of the American Bar Association. The movement appears to have the approval of the National Association.

After some preliminary investigation, the local committee in charge decided to offer two types of courses: one, an intensive re-examination of specific subjects; the other, a more general treatment designed to cover several subjects, particularly helpful to the younger members of the Bar. The first type was designed to enable those taking the course to check up on the legislative and judicial changes, in each particular subject, which have occurred in recent years. The second type offered practical suggestions in the handling of matters included within the discussion of each lecture.

The lecturers were carefully selected with due regard to training and experience in the subject assigned. Members of the Bar who availed themselves of this program are very much indebted to those who lectured. Each lecture required a great deal of time and painstaking labor. The completeness and authenticity of preparation were clearly demonstrated in the presentation. The syllabii for each of the specialized courses, prepared for the benefit of those in attendance, is of incalculable value.

SUBJECTS

The following specialized subjects were covered:
Corporate Procedure under State and Federal Acts, by Paul Fussell;
Wills and Trusts, by Paul Vallee (Wills), and Walter Nossaman (Trusts);
Death and Succession Taxes, by David Tannenbaum;

Income Taxes, by Joseph D. Brady.
The general course included the following subjects:
Appeals, by Hon. Marshall F. McComb.
Preparation for Trial, by Allan W. Ashburn.
Motions and Ex Parte Applications, by Hon. Emmet H. Wilson.
Preparation for Trial of a Personal Injury Case, by Norman S. Sterry.
Deferred Payment Contracts, by Maurice Saeta.
Bankruptcy and Reorganizations under 77-B, by Reuben G. Hunt.
Taxation Problems, by Joseph D. Peeler.
Federal Courts—their jurisdiction and procedure, by Hon. Leon R. Yankwich.
Organization of Corporations and issuance of securities, by Homer D. Crotty.
Municipal Court Practice, by Hon. Wilbur Curtis.
Criminal Trials, by Frederic H. Vercoe.
Municipal Corporations, by Leon T. David.
Wills and Trusts, by Elmo H. Conley.
Administration of Estates, by Court Commissioner Florence M. Bischoff.
Non-Jury Trials by Herbert T. Morrow.

ENCOURAGING

The response of the Bar to this initial effort of the Association has been very encouraging and appears to the committee in charge to fully justify offering additional courses next Fall. Those who have not attended this first series will do well to inquire of those who have attended, to ascertain whether the program is worth while.

The lectures have all been given at Porter Hall, University of Southern California School of Law, the facilities of which were made available through the cooperation and assistance of Dean Hale.

FINANCIAL REPORT OF LECTURE COURSES

Registrations and Receipts

Corporate Procedure			
Members	141 @ $ 5.00	$705.00	
Non-Members	10 @ 10.00	100.00	$ 805.00
General Course			
Members	191 @ $ 5.00	$955.00	
Non-Members	54 @ 10.00	540.00	$1495.00
Wills and Trusts			
Members	156 @ $ 5.00	$780.00	
Non-Members	9 @ 10.00	90.00	$ 870.00
Death and Succession Taxes			
Members	135 @ $ 5.00	$675.00	
Non-Members	17 @ 10.00	170.00	$ 845.00
Income Taxes*			
Members	79 @ $ 5.00	$395.00	
Non-Members	8 @ 10.00	80.00	$ 475.00
Total Receipts			$4490.00

*Registrations still being taken on "Income Taxes" report not complete.

COST OF LECTURE COURSE

While it is not possible to give the exact cost of the course at this time, it is estimated that the revenue was sufficient to pay all expenses and leave a small balance available for a similar purpose in the future. The largest items were, of course, the printing of the syllabii of the lectures for the use of those who enrolled for the respective courses, the rental of the lecture hall, stenographic and bookkeeping services, attendants at the lectures, and mailing expense.

On the whole, the experiment has proved most successful and no doubt will be followed by other courses of a like nature.

The Committee in charge of the lecture courses comprised the following: J. C. Macfarland, Harry J. McClean, David Tannenbaum, Maurice Saeta, Herbert L. Hahn, George Dryer.

JOINT MEETING

Los Angeles Bar Association—L. A. County Medical Association
Thursday, May 19, 1938, 6:30 P. M.

Elks Temple—607 South Park View

A NOTEWORTHY EVENT!

Medico-legal subjects will be the order of the program and you will hear fifteen-minute addresses from distinguished speakers as follows:

THE CRIMINALLY INSANE
—From the medical standpoint . . . . . DR. GLENN E. MYERS
—From the legal standpoint . . . . . MR. FREDERIC H. VERCOE

EXPERT MEDICAL TESTIMONY
—From the medical standpoint . . . DR. HAROLD DEWEY BARNARD
—From the legal standpoint . . . . . MR. HUBERT T. MORROW

COMMENTATOR EXTRAORDINARY . . . . . IN LIGHTER VEIN
HONORABLE LE ROY DAWSON, Judge of the Municipal Court

SELECTIONS BY THE FAMOUS "ELKS CHANTERS" FORTY STRONG
Under the direction of J. ARTHUR LEWIS

Don't overlook the half hour period from 6:00 to 6:30 P. M., which in this instance not only affords an opportunity for you to meet your fellow practitioner but the additional pleasure of meeting the members of the medical profession.

Guests, particularly the ladies, invited *Informal*

BAR ASSOCIATION SERVICES TO MEMBERS

WHENEVER a member of the Association solicits a fellow lawyer for his application for membership, it would be well to enumerate the activities carried on by the local Association for the benefit of the public and the bar.

Below is a list of the Association's principal activities:

1. Conducts bi-weekly luncheon meetings, at which well qualified lawyers or law professors discuss subjects of practical value to every lawyer in his practice.
2. Radio broadcast on Saturday evening of each week, from Station KFAC at 6:45 P. M., designed to inform the public on topics of interest and benefit to them.
3. Publishes the BAR BULLETIN for members, which always contains at least one technical article by a specialist, on new laws or decisions, of wide interest to active lawyers; besides, it keeps members informed of the activities of Associations in other States with respect to many problems affecting the practice of law.
4. Maintains an Experienced Lawyers' Service at the Association office, where members may file a statement of the particular branches of the law in which they specialize, and to whom inquirers may be referred.
5. Has conducted post-admission lecture courses for lawyers, consisting of two branches, (a) a special course for the older practitioners, and (b) a general course for the younger bar members. These lectures have proved popular and of much benefit to those attending. This service may be continued annually.
6. Maintains a Committee on Arbitration, to adjust controversies between attorneys and clients regarding fees and other matters.
7. Assists members who have ethical problems, with carefully considered opinions by the Ethics Committee.
8. Sponsors lecture courses by members at the Public Library auditorium, on subjects of interest to the general public.
9. Gives aid and assistance to the legal clinic, financial and otherwise.
10. The Junior Barristers Committee, consisting of about 400 young lawyers, renders invaluable services to the membership through its extensive activities in public and professional matters.
11. Likewise, the Women's Junior Committee, renders similar service to the membership generally, and particularly to women lawyers.
12. Takes an important part in State Bar work, particularly in considering and sponsoring matters for actions at the State Bar annual conventions. It has always sent the largest body of delegates to State Bar meetings.
13. Sponsors a legislative program for the improvement of the administration of justice at each session of the Legislature.
14. Conducts a plebiscite of the lawyers of the entire county on all candidates for the Superior and Municipal Courts, and advises the public of the result thereof.
15. Gives monthly golf tournament for membership, under arrangements by the Golf Committee. This activity is self-supporting.
16. Holds monthly dinner meetings of members, at which are presented discussions by prominent speakers on subjects instructive to lawyers, as well as entertainment programs.
17. The Board of Trustees meets weekly to consider administrative matters of the Association as well as a variety of problems affecting the welfare of the Bar.

LIABILITY OF MEMBERS OF UNION FOR TORTS

By Daniel G. Marshall, of the Los Angeles Bar

THE subject of this article contemplates a consideration of the liability of members of a labor union for the torts of fellow members, officers and agents thereof committed in the course of a labor dispute in which such union is a participant. It excludes from consideration torts committed by such members, officers and agents in the execution of union business outside of labor disputes. It is further confined to torts committed without the active participation or knowledge of the member upon whom liability for the tort is sought to be fastened by the injured party. The liability of the member personally participating in the doing of the tortious act is obvious.

Limitation of space allows only a casual examination of the problem which is largely one of first impression. At the most only lines of research can be here suggested for the same reason.

There appears to be no statutory provision upon this subject in California. The case literature of this state is likewise devoid of any treatment of this subject. The same situation seems to exist to a large extent throughout state courts, although the federal courts have considered the matter in connection with a statute involving interstate commerce.

In England, the Trade Disputes Act of 1906, according to one author, provides that "acts done in contemplation or furtherance of a trade dispute shall not be actionable on the ground of interference with another's contracts, business or employment, and exonerates trade unions from liability in respect of any tortious act alleged to have been committed by or on their behalf."[1] But apparently this statute does not extend its protection to members in their personal capacity.

VOLUNTARY ASSOCIATIONS

Labor unions, it is well known, seldom incorporate. Their form of organization is most often described as a voluntary association, an unincorporated association or a voluntary unincorporated association. At least so far as judicial interference with their internal organization is concerned, California has placed them in the catagory of voluntary associations.[2] Members of an unincorporated association have been said by the courts of the same state to be in the same status as partners, so far as liability for debts necessarily incurred by the association is concerned,[3] although another California case, while reaching the same result as to the liability of members, terms the association a joint venture.[4] That the members did not expect to reap any personal profit from the enterprise in which they were engaged does not in any wise affect their liability.[5]

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[1] *Organized Labor and Industrial Conflicts*, Oakes (1927), p. 148.
[2] *Greenwood v. Building Trades Council*, 71 Cal. App. 159, 169.
[3] *Burks v. Weast*, 67 Cal. App. 745, 751.
[4] *Leake v. City of Venice*, 50 Cal. App. 462, 465, 466.
[5] *Burks v. Weast, supra.*

An opposite view is taken in at least one other state where the facts that the association did not engage in a business enterprise and did not contemplate profits or losses, but was organized for beneficial purposes, was said ordinarily to exempt members from liability for association debts.[6]

Hence, it appears necessary to consider the question here under discussion in the light of the primary concept of torts and secondary liability therefor. The present limits do not permit a discussion of particular tortious acts except incidentally. In referring to tortious conduct the present writer has adopted the somewhat tautological concept announced in Restatement of the Law of Torts, viz., "the word 'tortious' is used throughout the restatement of this subject to denote the fact that conduct whether of act or omission is of such a character as to subject the actor to liability under the principles of the law of torts."[7]

The precise subject here attempted to be discussed involves, plainly, a consideration of the agency, if any, existing between a member not personally participating in the tort and the other member, officer or agent personally performing the tortious act. Obviously, the nature, purpose and raison d'etre of labor unions must be examined. The reason for the existence of such organizations was recently stated by the Supreme Court of the United States to be as follows: "Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer: that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he though fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."[8] The purpose of a labor union is reflected by the reason for its existence, *i. e.*, to obtain the opportunity for its members to deal on an equality with their employers.

As long ago as 1905, the District Court of Appeal of this state impugned the sanity of persons who denied the right of labor to organize for mutual benefit and self-protection[9] and recognized the purpose of a labor union to be the mutual benefit and protection of its members. Hence, it is clear that a labor union cannot be said to be operated for the purpose of conducting any business enterprise but is purely one for the protection of labor against the injurious exactions of capital[10] and for the mutual benefit of the members. That the mutual benefit obtained flows from improved working conditions obtained for the members and not from the operation of the labor union, as such, at a profit to be later distributed to the members, seems to be plain.

LIABILITY NOT INFERRED

In the final analysis the question here sought to be answered amounts to nothing more than an inquiry as to whether or not mere membership in an association makes such members liable for the acts of their fellow members or for the acts of agents of the entity. So far as an illegal expulsion from membership

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[6] *Stege v. Louisville Courier Journal Co.*, 196 Ky. 795, 245 S. W. 504.

[7] *Restatement of the Law of Torts*, p. 16, para. 6.

[8] *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893.

[9] *Jordahl v. Hayda*, 1 Cal. App. 696, 699.

[10] *W. A. Snow Iron Works v. Chadwick*, 227 Mass. 382, 116 N. E. 801; *Burnetta v. Marceline Coal Co.*, 180 Mo. 241, 79 S. W. 136.

is concerned, Massachusetts has held that liability against a member for such an act is not to be inferred from mere membership where the same is accomplished without his approval or knowledge.[11] About the same result seems to have been reached by the United States Circuit Court in holding that members of a labor union are not responsible for a tort of other members unless they have participated in it or have aided in some way in its participation after knowledge of the illegal purpose or facts from which such knowledge may be inferred, according to one writer in this field.[12]

The statement of the United States Supreme Court that "as a matter of substantive law, all the members of the union engaged in a combination doing unlawful injury are liable to suit and recovery . . ."[13] is sometimes cited in support of the assertion that members of a union are liable for torts committed by other members without their knowledge. The case in which this statement was made was a suit under the Sherman Anti-Trust Act of July 2, 1890 (C. 647, Section 7, 26 Stat. 209, 210), and concerned the suability of a parent labor union and its local unions as well as the availability of a strike fund of the district labor union to execution upon a judgment recovered for unlawful injuries inflicted in the course of a strike. The same case, however, refused to fasten liability on the parent body for past torts on the theory of ratification by the president of the parent body, who had no authority to order the local strike in which the tort was committed, arising from such president indicating his sympathy for the strikers and the publication in the parent body's magazine that the tortious act of the union members was justified on the ground of self-defense. Furthermore, it is plain that an essential ingredient of such a conspiracy must be the knowledge possessed by the conspirators of the unlawful nature of the act. Hence, it is clear that the authority cited does not support the assertion noted.

The concept of liability of a member not participating in a tortious act of a co-member or agent of the union must, perforce, be founded on the idea that such non-participating member is the principal and the tort feasant the agent. Upon the maxim that he who does an act by another does it himself, a principal is liable to third persons for torts committed by his agent in pursuance of, or a natural result of, express orders given by the principal or which he has expressly authorized or specially directed his agents to commit.[14]

CONTROL

Cursory reflection would seem to indicate that liability should not be fastened upon such non-participating member under the pretense of an analogy to the relationship of principal and agent. The underlying philosophy of respondeat superior contemplates that the principal has control of his agent. But the power to discharge a union agent or to expel a fellow member does not lie exclusively with any particular individual member. Indirectly, he has a slight measure of control over officers and agents of the organization by the individual vote he casts at the union election. Plainly, however, this species of "control", if it may be called such, does not approach even distantly in its effectiveness the control of a principal over his agent.

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[11] *Sweetman v. Barrows* (Mass.), 161 N. E. 272, 62 A. L. R. 311.
[12] *Organized Labor and Industrial Conflicts*, Oakes, p. 51 para. 48.
[13] *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 66 L. Ed. 975, 27 A. L. R. 762, 774.
[14] *Revert v. Hesse*, 184 Cal. 295.

The idea that the non-participating member should be immune from being assessed for damages arising out of the tortious act of a fellow member, or agent or officer of the union should not be too shocking to the judicial or legislative conscience. The same theory exempts a stockholder for the tortious acts of the corporate officers and agents. No recourse can be had against the individual property of stockholder who does not personally participate in the tort committed by the agent of the corporation.

In a lower court decision of New York, liability was imposed upon a national labor union for its participation in acts held to be illegal done in connection with an effort to organize the plaintiff's employees.[15] In this case the national organization had placed two national organizers in the field, thus creating, according to the opinion, a liability based upon the doctrine of agency. The same case held that "this responsibility, however, does not impose a personal liability upon the entire membership, but only upon those who are named as defendants and personally participated, directly or indirectly, in the wrongful acts complained of." It was further said that "a concert of action by a labor organization and its members to compel recognition of a union, or to redress grievances, by means of threats, intimidation, force, violence, or similar coercive measures constitutes a conspiracy, whether such intent was present at the inception of the strike or afterward and a national unincorporated labor union is liable for damages, if its officers and agents, acting within the scope of their authority as such, called and carried on the strike, with the intention of using such unlawful means, and used such means; but the liability does not extend to the individual members who are not specially connected with such acts."

The opinion in this case contains a virulent denunciation of the defendant union but was unable to reach the conclusion that members in ignorance of the tortious acts were liable although liability was fastened upon the national organization. These different conclusions of the opinion are plainly based upon the participation of the national organization through its organizers and the lack of participation by the members held immune from liability.

PETTIBONE CASE

In a federal case,[16] a temporary injunction against members of a local union from doing certain alleged illegal acts in furtherance of an alleged illegal scheme to unionize the plaintiff's plant was dissolved upon a showing by the members that the general officers of the union were not authorized to represent them in their alleged illegal acts, and that they knew nothing of their efforts to unionize the plaintiff's factory. It was said in this case that "the union is a voluntary association, and its members are not responsible for a tort of other members, unless they have authorized or participated in it, or have aided in some way in its perpetration after knowledge of its illegal purpose, or facts from which such knowledge may be inferred". *Pettibone v. United States,* 148 U. S. 197, 13 Sup. Ct. 542, 37 L. Ed. 419 and *Lawlor v. Loewe,* 209 Fed. 721, 126 C. C. A. 445, are cited in support of this statement.

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[15] *Michaels, et al. v. Hillman,* 183 N. Y. Supp. 195.

[16] *Hill, et al. v. Eagle Glass & Manufacturing Co.,* 219 Fed. Rep. 719, reversed in 1917 in 245 U. S. 275 upon the ground that it was error to dismiss the bill for injunctive relief, upon the submission of an application for temporary injunction on *ex parte* affidavits without any consent that the court proceed to final determination of the merits. The dissolution of the temporary injunction was, however, approved.

Pettibone v. United States, supra, dealt with a conviction for conspiracy, corruptly and by threats and force to obstruct the administration of justice in a federal court. It appears that a union was enjoined from attempting to prevent plaintiff's employees from proceeding to work. The defendants were charged with conspiring to violate this injunction but the indictment was held to be fatally defective because it failed to charge that defendants knew of its issuance. It is difficult to see the force of this case as a precedent for the statement in *United Traction Co. v. Droogan, supra,* hereinabove quoted. *Lawlor v. Loewe* (The Danbury Hatters' case) also cited in support of the same statement will be later noted.

In another lower court decision of New York,[17] it was said in an action for injunctive relief that "every member of the union is responsible for the acts of the others, and particularly for the acts of any officer. In *Hitchman Coal & Coke Co. v. Mitchell,* 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918 C., 497, and Ann. Cas. 1918B, 461, the Supreme Court of the United States said: " 'When any number of persons associate themselves together in a prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all, so that the act or declaration of one in furtherance of the common object is the act of all, and is admissible as primary and original evidence against them.' "

The Hitchman case was a suit in equity enjoining any attempt to unionize the plaintiff's employee. The proceedings of the union convention were shown by its authenticated report. The defendants objected to the introduction of this report upon the ground that they included declarations of third persons. The objection was said to be untenable for the reason that while it is necessary to show by independent evidence that there was a combination between such third persons and the defendants the unlawfulness of the combination could be shown by the declarations of these third persons. Then follows the quotation contained in *United Traction Co. v. Droogan, supra.*

The present subject suggests some mention of the Danbury Hatters' case (which is titled, as has been noted, *Loewe v. Lawlor*), a landmark case in the history of the labor movement in this country. This litigation extended over a period of ten years. Its history to 1913 appears in *Lawlor et al. v. Loewe, et al.,* 209 Fed. Rep. 721, and its final phase is reported under the same title in 235 U. S. 523, decided in 1915. This comment on *Lawlor v. Loewe* is principally based on the two opinions last cited although a competent understanding of the points decided requires a reference to the other three opinions in this case as well.

In this case, the plaintiffs were engaged in the manufacture of hats, and had a large interstate business, employing union and non-union members. The individual defendants were members of the union paying dues to their locals in the town in which the plaintiff's plant was located and in neighboring towns. These locals were chartered by their national organization, the United Hatters of North America, to which a portion of the dues was remitted. The United Hatters were affiliated with the American Federation of Labor. In an attempt to unionize the plaintiff's plant, a strike was called and both union and non-union men left the factory and a primary and secondary boycott of the factory product was instituted on a national scale by the Federation, resulting in the destruction or curtailment of a large part of the plaintiff's interstate business.

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[17] *United Traction Co. v. Droogan, et al.,* 189 N. Y. Supp. 39.

GROUP JUDGMENT

An action under the Sherman Anti-Trust Act of 1902, supra, for treble damages for a combination and conspiracy in restraint of trade resulted in a final judgment of over two hundred thousand dollars. The defendants not employed by the plaintiff when the strike was called contended that they knew nothing of the purpose of the strike except that it was to establish union conditions in the plaintiff's factory. This contention was not made by the defendants who were so employed. The judgment against both groups of defendants was affirmed.

The judgment against the groups of defendants who asserted ignorance of the boycott was said to be justified by their knowledge, actual or constructive, of the purpose of the boycott. Such knowledge was said to have been shown by newspaper articles in the press of the communities where these defendants lived which was adjacent to the city where the plaintiff's plant was located, by the circulation among them of their union magazine and the Federation magazine, reciting the existence of the boycott and by a notice sent by the plaintiff to all hatters listed in the city directory warning all members of the labor unions that they would be held responsible for unlawful acts of such unions. Furthermore, the Federation constitution provided for the prosecution of boycotts and the by-laws of the United Hatters forbade its members to sell non-union hats and set up a strike fund. Testimony of the payment of dues by these members after the action was filed was said to be inadmissible except for the purpose of showing their interest as witnesses on cross-examination. However, an instruction that if these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiff's interstate commerce in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matter within their delegated authority, then such members, and no others, were jointly liable, was approved.

Any conclusion suggested by the cases here cited and discussed must be hesitantly advanced. However, it seems to be fairly clear that mere membership in a union will not impose liability on the members personally for the torts of the kind here considered committed by their fellow members or agents of the union. Payment of dues by itself, it also seems fairly certain, would not impose liability. But payment of dues after knowledge of the continuing wrongful acts of officers, at least, acting within the scope of their authority, might be an element in creating such liability. The imposition of liability upon such members through the medium of an agency relationship would not seem to bear too critical an examination.

AMAZING!

It is reported in the press that the Association of the Bar of the City of New York is expected to recommend that the State Constitutional Convention draft a provision authorizing establishment of a compensation system for vistims of automobile accidents. The report refers to "the inadequency of remedies provided through the courts," and that, "this has created a serious social problem, affecting not only those who have been injured but the very administration of justice itself."

It is surprising that any group of lawyers would see fit to advocate, if the report be true, the setting up of another administrative tribunal, which would be wholly political, to take such matters away from the courts. Already the number of administrative bureaus and commissions, before which lawyers may practice, threaten the very existence of the legal profession.

PRE-TRIAL PROCEDURE IN LOS ANGELES MUNICIPAL COURT

By Wilbur C. Curtis, Presiding Judge, Municipal Court

CONTROVERSIAL opinions concerning the merits of the pre-trial procedure in use in the Los Angeles Superior Court have resulted in frequent queries by the legal profession as to whether or not the Los Angeles Municipal Court intends to adopt such a system.

A study of the subject was made by a committee of Municipal Court Judges in the early part of 1937, and resulted in a recommendation that such procedure be not adopted in that court; and at a subsequent meeting of the judges, this recommendation was unanimously adopted as expressing the opinion of the court as a whole.

Among the conclusions reached by the committee, were the following:

First: That the objects which have been said to have been successfully accomplished in other jurisdictions in which pre-trial procedure has been established, have already been achieved in California through our proceedings for summary judgment and the Master Calendar system for the distribution of cases for trial. This is apparent when it is understood that the purpose of the so-called pre-trial procedure is to limit cases placed upon the calendar in trial divisions, to those which are ready for trial, and to eliminate issues concerning which there is no bona fide dispute.

It is significant that prior to the adoption of the system in the Los Angeles Superior Court, every article upon the subject referred to Los Angeles as one of the places in which the system was in use. Obviously, the authors were referring to our proceedings for summary judgment and the Master Calendar system which was then already in effect, and which so far as California courts are concerned, was originated in the Municipal Court of Los Angeles approximately nine years ago.

Analysis, therefore, discloses that the principal feature of eastern pre-trial procedure which is not in use in the Municipal Court, is the opportunity thereby presented for counsel to confer with each other prior to trial and endeavor to obtain stipulations of fact, which will reduce the time required for trial of the action.

Experience with the present Master Calendar system has proven that a similar opportunity is afforded counsel in the calendar division while awaiting assignment to the trial court, and while on the way to the trial division, and that as a result of such conferences, many cases are settled or reduced to issues upon which there is a bona fide dispute.

"The multiplication of administrative agencies is the outstanding characteristic of our time. . . . They will succeed in their mission to the extent that they perform their work with the recognized responsibility which attaches to judges and with the impartiality and independence which is associated with the judicial office.

"I notice, that there is a tendency, in the desire to emphasize the importance of obtaining flexibility and expertness in particular classes of cases, to depreciate the work of the courts and by comparison to exalt administrative boards and commissions.

"Such efforts are shortsighted and are not in the interest of the suitable development of administrative agencies."

—(Chief Justice Charles Evans Hughes before the American Law Institute, Washington, May 12, 1938.)

A second conclusion reached by the committee was that the amount involved in the average Municipal Court case is not large enough to justify adequate compensation for an additional court appearance by counsel. The committee was mindful of the fact that such a preliminary conference might in some instances result in shorter trials and a conscequent saving of time of the Court, but was nevertheless of the opinion that the Court was not warranted in effecting such a saving at the expense of litigants who could not afford it.

The present $2,000 limitation upon the Court's civil jurisdiction results in an average judgment of less than $250. Attorneys will quickly recognize the impossibility of obtaining adequate compensation for two appearances in Court in such cases.

The Committee's report also pointed with pride to the fact that, although the salaries paid Los Angeles Municipal Court Judges are approximately thirty-eight per cent less than the average salaries paid in courts of similar jurisdiction in other states, the Judges handle approximately ninety-one per cent more cases per judge than the average of such other courts, indicating that the Los Angeles Municipal Court, under present procedure, is probably the most efficient court of its kind in the United States.

THE VAGRANT AND THE POOR, A SOCIAL AND ECONOMIC PROBLEM

By Allan Macdonald Carson, of the Los Angeles Bar

THE recent article by Judge Pope on the problem of the "vag-roamer"[1] constitutes an earnest and sincere expression on the subject. But it does not seem completely to join the issue. Therefore, these remarks are interposed by way of replication.

It is submitted that the problem at hand is not judicial in nature, but rather an economic one beyond the power of the courts to solve.

No one can properly deny that the flow of population from place to place should be supervised and regulated in the interests of public welfare. The vagrancy laws were enacted with this end in view. They are preventive in their nature rather than punitive.[2] However, they should be construed strictly and executed carefully in favor of the liberty of the citizen.[3] Criminal laws are not to be construed loosely, even to effectuate a good purpose.[4] But how is one to construe a statute which constitutes as a vagrant "Every person who roams about from place to place without any lawful business"? Under such a law, who is a vagrant? Quite plainly, anyone the court chooses to consider as such. And there lies the difficulty.

In theory the courts may recognize the existence of different classes among the nation's poor, but in practice they fail to make a proper classification in the individual case. The fault lies more with the law than with the judges, since they are given little aid in making distinctions under a law which apparently recognizes none.

CLASSIFICATION

The poor we shall always have with us, it seems. But they come in varying degrees, each degree a separate and distinct class presenting a separate and distinct problem. They confront us as follows. First, the impotent poor, those unable to work. Second, the able-bodied poor, those able and willing to work but unable to find it. Third, the vagrants, those who won't work and who don't want to find it.[5]

Concededly, the impotent poor should be kept and cared for at home and not be allowed to wander impotently about. But what shall we do with the able-bodied poor, able to work, willing to work, but with no work to do? Shall they be told that they must stay at home and starve? What of their rights as American Citizens to go about freely from place to place under equal protection of the laws? When the courts of this state fail to distinguish the able-bodied poor from the true vagrant they are guilty of an abridgment of the privileges and immunities of an unfortunate class of citizens. We have neither the moral nor the legal right to insist that our modern unemployed remain in one spot either to starve or to go on relief.

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[1]13 L. A. Bar Ass'n Bulletin 205, March 17, 1938.
[2]Note 111 A. L. R. 71; People v. Forbes (1860) 4 Park Crim. Rep. (N.Y.) 611.
[3]*Id.*
[4]Jacobs v. State, 57 S.E. 1063, 1064, 1 Ga. App. 519.
[5]See "Vagrancy Law, Its Faults and Their Remedies," by John Lisle, 5 Am. Jnl. of Crim. Law, 498.

In the interests of the public welfare it is proper to restrict the liberties of the vagrant class. When dealing with that class alone it is proper to say that a person travels lawfully only when he seeks citizenship in the state of his destination and comes under such circumstances as to reasonably assure us that he will be able to live without resort to public relief. But we must be careful that we are dealing with that particular class and that we are not confusing the sheep with the goats. Can we be sure of a proper classification when the law leaves it to the individual opinion of the judge?

It is a common human failing to assume that industry and honesty always receive their just reward. From this it is readily concluded that the poverty-stricken and unemployed are neither industrious nor honest. Therefore, we decide that all the unemployed who wander into this state in search of work are to be placed in the vagrant class. If the major premise were true we would be justified in arriving at such a conclusion. But sadly enough, industry and honesty alone form no guarantee of security. They must be coupled with a third factor, opportunity. And this third factor seems to grow less and less prevalent.

MODERN STATUTE NEEDED

What we need in California is a modern vagrancy statute. Our present law dates back to somewhere around the 14th Century in England, back to the days of feudalism and serfdom, when the laboring class was attached to the land on which they worked and if caught wandering away could be promptly planted back

on the soil from which they came. "The situation is one in which the laws of a medieval island country are being strained to meet the conditions of a modern world, where transportation, employment, society and the means and theories of social protection have changed beyond recognition."[6]

In the interests of justice and to better enable us to distinguish between the true vagrant and the mere unfortunate, Subdivision 3 of Section 647 of the Penal Code should be amended to read approximately as follows:

> "Every person who *habitually* roams about from place to place without any lawful *purpose and who offers a menace to public peace and safety;* Is a vagrant . . ."

A provision worded as above might help to limit the application of the statute more closely to the class of person for whom it was intended, and might serve to prevent any wholesale misapplication of the law.

A further step in the interests of justice would be a change in the order of the proceedings now taken under the vagrancy law. At present charges are filed against all persons apprehended by the police. These persons are then arraigned before the court, sentenced on a plea of guilty, tried and sentenced on a plea of not guilty, and jailed. Their case is then referred to the Court Assistance Project for investigation looking toward a possible modification of the sentence. The investigation may reveal facts which show that the unfortunate individual was not a vagrant in the first place. But by that time he has already become a jailbird with a criminal record. If those apprehended by the police were first turned over to the Court Assistance Project for investigation a fairer and better segregation might be made and those more closely approximating true vagrants in character might be the only ones to go before the court and suffer the penalty of the law.

A dismissal of a charge under Section 1203.4 of the Penal Code after the terms of probation have been satisfied merely removes the legal disabilities incurred by a criminal record. It does not help at all to remove the more serious social and economic disabilities arising therefrom. It does not help a young man seeking employment and confronted with a form of application on which he is asked if he has ever been arrested or served a jail term. To save such a young man a future, a job and security, it might be well to investigate his case first, and file charges later if the facts warrant it. No handling of a social problem can be called humane which ends with a jail sentence for the individual involved.

PROBLEM CASES

The case of the young student of music, the case which has been the starting point of this current discussion, presents a problem virtually impossible of proper and just handling under our present law. Admittedly, it is a problem involving a certain measure of poor social adjustment, but by no means to that degree requiring penal treatment. It is the type of maladjustment which usually makes our poets and workers in the arts, the type which sometimes produces genius. Yet for lack of anything better to do with the young man we jailed him. There is now a criminal record against him.

True, he pleaded guilty to the charge, but he did so under the mistaken impression held by so many that anyone found without money, a job and an immediate place to stay is a vagrant in California. Being told by the court

[6]Article in 5 Am. Jnl. of Crim. Law, *supra*, at 510.

that he was charged with roaming about from place to place without any lawful business did not serve to enlighten him upon the subject.

Having pleaded guilty, the police report on his case was taken as true. As a matter of fact, it was decidedly false. Not of course intentionally so, but false nonetheless. It is true that he did hitch-hike from New York. But he does not roam about from place to place with no certain destination. It is true that he had no money or visible means of support and no place to stay. But most certainly he was not found loafing in the park. That last accusation against him did him the greatest injustice.

It is stated that he was discharged from a position for habitual tardiness. He practiced his music most of the night. Without sleep or rest he would go to his job in the early morning. He burned the candle at both ends in an effort to follow his chosen interest in life and so lost his job. Ironically, the day this young man appeared in Sunrise Court for hearing on the modification of his sentence the court was one hour and a half late in starting.

If this young man under our law is a vagrant then our law on the subject is unconstitutional.

The administration of our vagrancy laws goes to the very root and foundation of our social structure. These laws are of vital significance. It has been said that it is no disgrace for a genuine man to be poor. However that may be, we in California, in our effort to solve a difficult economic problem, have made poverty a crime.

SOLICITATIONS FOR CAMPAIGN PURPOSES

RESOLUTION OF BOARD OF TRUSTEES
LOS ANGELES BAR ASSOCIATION

WHEREAS, prior to each primary election of Judges for Superior Court and Municipal Court, members of this Association are directly or indirectly solicited for contributions to the campaign funds of candidates for election or re-election to judicial offices; and

WHEREAS, the giving of contributions constitutes in effect an endorsement of the person for whom such funds are solicited, but the refusal of such contributions is frequently embarrassing when other members of the Association are making similar contributions; and

WHEREAS, it is the desire of the Association that each plebiscite conducted by it among the members of the Bench and Bar of Los Angeles County shall reflect the unbiased and uninfluenced opinion of the members of the Bench and Bar in Los Angeles County as to the judicial qualifications of the various candidates considered in such plebiscite, and for that reason this Association has heretofore requested its members not to endorse candidates for judicial office prior to such plebiscite;

NOW THEREFORE, BE IT RESOLVED: That members of this Association be, and they are hereby requested to refrain from making contributions to the campaign fund of any candidate for judicial office at primary elections, together with all other endorsements, until after the results of the plebiscite of the Los Angeles Bar Association as to such office have been published.

Adopted: May 11, 1938.

One of the striking variances, which is probably responsible for a great deal of the greater unity and effectiveness of the medical organization, is the fact that the latter has been able to prove itself useful to its members, in practical ways. A physician needs and wants to belong to the organization of his profession, if he can possibly get in. Membership is looked on as a certificate of professional standing, and the Association has developed a capacity for supplying the average medical doctor with factual data and experience which are highly useful to him in his professional work. The medical organizations have made themselves virtually indispensable to the average practitioner in the field of medicine.

Neither the American Bar Association nor the State Bar Association have as yet developed any such propensity or capacity. I have so far been utterly unable to convince many men in high position in the American Bar Association that if the latter is to have a large membership and a real influence, it must supply to its members the informative and useful services, corresponding to those which lead physicians to attach great importance to their membership in the medical organization. Our own New York State Bar Association has gone further along these lines than any other bar organization I know of, but the American Bar Association and nearly all of the state associations are so far laggard in this respect. I have not given up hope of headway.—(William M. Ransom, former President American Bar Association.)

JUNIOR BAR PRESIDENT'S REPORT

CLIMAXING its year's activities with the sponsoring of the Senior Bar's January Banquet, the Junior Barristers of the Los Angeles Bar Association in February completed twelve months of intensive and effective work under the capable leadership of their president, James C. Ingebretson. In his annual report recently received at the offices of BAR BULLETIN, Mr. Ingebretson outlined the work of the group and gave full credit for splendid assistance to certain Standing Committees appointed by him under a so-called "committee preference" plan.

The Barristers during the past year modified and expanded their many activities and made certain desirable changes in their by-laws, particularly with respect to membership requirements.

The Co-ordination and Public Relations Committee assisted by numerous sub-committees co-ordinated the work of the Junior Barristers with that of the local, State and American Bars. This committee also worked assiduously toward the establishment of better public relations for young lawyers by contacts and joint programs with other associations, professional groups and public and semi-public bodies and officials.

This work was carried into the schools in an effort to promote a plan of more intensive pre-legal training. A general awakening of a sense of community responsibility was accomplished by speakers furnished by the Juvenile Crime Prevention Committee.

Through the Research and Information Committee, the younger lawyers did invaluable work along special investigation lines. An exhaustive report which has received favorable comment was prepared by the vice-chairman of this committee. The subject was "Proposal for Supervision and Investigation of Judicial Conduct by the Judicial Council."

Special activities of the Junior Bar included speeches by members on matters of current interest before representative public gatherings. These activities were fostered by special committees appointed by the president for that purpose.

During the year, the Barristers had their usual Spring Frolic, and the annual get-together with the Young Medicos.

A program of special interest was one conducted by the Junior Bar in honor of the Municipal, Superior and Federal Court Clerks.

Five breakfast meetings were held at which prominent members of the local Bench and Bar were the principle speakers.

In closing his complete and interesting report President Ingebretson paid a deserved and fitting tribute to Senior Bar Advisors, Hubert T. Morrow, Frank R. Belcher, and Allen W. Ashburn.

THE BULLETIN wishes for the new President of the Junior Barristers, and the young men of the Bar generally, continued success in their very fine efforts.

ARCHAIC LAW ENGLISH

Better English Magazine, New York, contains an article that should interest lawyers. The writer thinks that legal English is archaic and should be streamlined; that other professions and businesses change their terms to meet the needs of new times and customs, but legal English recognizes no progress. Adopting "streamlined" language, it seems to us the writer has "got something there;" in fact, he "said a mouthful."

PARTISANSHIP IN JUDICIAL ELECTIONS

RESOLUTION OF LOS ANGELES BAR ASSOCIATION BOARD OF TRUSTEES

WHEREAS, this Board on or about June 12, 1936, adopted the following resolution:

> "**WHEREAS**, it appears that attempts are being made to inject partisan politics into the matter of judicial selection;
>
> "**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Trustees of the Los Angeles Bar Association that we hereby deplore and condemn any and all actions tending in anywise or manner to inject partisan politics into the election of judicial officers; and
>
> "**BE IT FURTHER RESOLVED**, that it is the sense of this Board that the injection of partisan politics into judicial elections or the seeking of preferment by a candidate for judicial office upon the basis of party affiliation is contrary to the letter and the spirit of the laws of this state and tends to impair the basis of individual fitness for the office, which should be the sole standard in the selection of judicial officers;" and

WHEREAS, the opinion of this Board as expressed in said resolution has been concurred in by the large majority of the citizens of the community;

NOW, THEREFORE, BE IT RESOLVED, that it is the opinion of this Board that any candidate for judicial office, seeking or accepting the endorsement of any political party for such office, thereby shows a disregard for the spirit and intent of the laws and statutes of the State of California, now in effect, together with a degree of partisanship which seriously reflect upon his qualifications to hold such judicial office.

* * *

I hereby certify that the above is a true and correct copy of Resolution adopted by the Board of Trustees of Los Angeles Bar Association, in regular session assembled on Wednesday, March 23, 1938.

(Seal)

J. L. ELKINS,
Executive Secretary.

Certified May 9, 1938.

THE BAR TURNS TO ADVERTISING

THAT which has been discussed and predicted for a long time, has come to pass; the bar has resorted to group advertising.

The first association to embark upon this revolutionary departure from the hitherto conservative policy of the legal profession in such matters, was the St. Petersburg, Fla., Bar Association, followed by the Atlanta Bar Association.

The advertisements, with cuts and reading matter, were prepared and copyrighted by an Atlanta advertising firm, and mats in half-page or quarter-page sizes furnished to the Associations. The money to pay the cost of the advertising was contributed by members of the respective associations.

The two associations named used a series of four ads in the principal newspapers of their respective districts. Tremendous interest is manifested in the experiment. It is reliably reported that 192 bar associations have requested the Atlanta and St. Petersburg organizations for details as to cost, public reaction, press comment, and traceable results therefrom.

Meantime, the Ethics and Grievance Committee of the American Bar Association is studying the ethical problem. It is understood that a report on the matter will be issued by the A. B. A. committee following its meeting this month in Washington, D. C.

Bar Associations in New York, Philadelphia, Chicago, and other large centers have appointed Public Relations Committees to study this and other problems affecting the bar generally. Our own State Bar also has a committee at work on a Public Relations plan.

Manifestly, great changes are taking place in the legal profession as well as in other professions and businesses.

A SUPERANUATED BENCH?

By Frank G. Tyrrell, Judge of the Municipal Court, Los Angeles

IN his masterly defense, the brilliant Irishman, Robert Emmet, with fine scorn, referred to "the atrocious crime of being a young man," which he declared he would attempt neither to palliate nor deny. Has it now come to pass that we must speak of the atrocious crime of being an old man? For some years, with the rapid advance of technology, we have been familiar with the "age dead-line" in industry. Now there seem to be those among us who would advance it to the judiciary, and the "nine old men" on the Supreme Court bench are in the spotlight.

It is interesting to recall what was said on this subject when the Constitution was before the States for adoption. The classic expression is that of Hamilton in *The Federalist*. In No. 78, he shows the necessity of permanency in tenure, for life or during good behavior; in No. 79 after discussing the stipend, he refers to the complaints that were being made about the lack of a provision for removing judges on account of inability. Such a provision he insists either would not be practiced upon, or would be more liable to abuse than calculated to answer any good purpose. He disapproves the then provision in the constitution of New York, retiring judges at sixty.

"There is no station," says Hamilton, "in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period in men who survive it; and when, in addition to this circumstance, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable portion of the bench whether more or less numerous, should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them."

DISCRETION COMES WITH AGE

It was this feature of President Roosevelt's court revision plan that was the weakest. It is a part of the proverbial wisdom of the world that age brings a maturity of mind, a serenity, and a deposit of discretion that go to fit their possessor for the judicial function, with an adequacy that is largely lacking in their earlier years. In the heat of that controversy, it was stated that the ages of our Supreme Court justices were,—Hughes, 75; Brandeis, 80; Van Devanter, 78; McReynolds, 75, Sutherland, 75; Butler, 71; Cardozo, 67; Stone, 64; Roberts, 62. And the idea, which seemed to be latent in the President's suggestion, that old age is necessarily beckward looking and reactionary, is belied by the facts; probably no more progressive, tolerant, liberal mind can be found in public life today than that of Justice Brandeis. It is wholly a matter of individual temperament, whether one belong to the party of "the establishment," or the party of "the moment,"—to borrow a phrase from Emerson.

At 70, Foch commanded the allied armies; at 81, Palmerston was premier of England, and Gladstone at 83 at 74 Bismark was creating and enforcing his policy of "blood and iron"; at 90 John Adams and at 80 Jefferson were still dynamic leaders; Franklin's kite experiment and much of his best work in science and government were done between 70 and 82; when past 72, Goethe finished "Faust," while at 80, Verdi was still writing operas; at 98 Titian painted more masterpieces; at 83 Herbert Spencer was among the Titans; and at 93, Pope Leo was the directing genius of the pontificate. This by no means

exhausts the list of those whose ripest work was done after they would have been consigned to slippered idleness by any age limit.

Age profits not only by the maturity and wisdom the years bring, but also by what it leaves behind,—passion, prejudice, and to some extent, a merely selfish ambition. The horizons are wider, perspectives truer, tolerance and magnanimity more in evidence, and many a mental twist is straightened.

JUVENILE BENCH

If not a superannuated bench, shall we have a sub-annuated, a juvenile bench? Most lawyers feel reassured when they find on the bench a man whose age indicates something of maturity, culture, and rich experience. If the judge is to have an understanding sympathy with the advocates before him, he must not think of going on the bench until after some years of active practice at the bar, and fifteen or twenty are better than five or ten. With examples before us like Holmes and Brandeis, it is easy to see the folly of trying to apply an age limit to judicial service.

After all, it depends on the personality, the character of the man. As Cicero says, "Men are like wine; age sours the bad, but improves the good." The man in whom there is an inextinguishable love of learning, who carries the eager enthusiasm of youth through the decades, whose sympathies grow deeper, whose insight grows clearer, is not the man society can afford to dispense with, and relegate to inertia, idleness and decay.

Still further to quote Hamilton: "In a Republic, where fortunes are not affluent, and pensions not expedient, the dismission of men from stations in which they have served their country long and usefully, and on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench." All this is not to say, of course, that there are not now and then men in judicial office whose retirement at any age would be a benediction.

TEST RADIO PROGRAMS

Upon mandate of the members of the Washington State Bar Association, in convention at Bellingham, Washington, in 1937, the Board of Governors, after conferring with the Board of Governors of the Oregon Bar Association, determined that the Public Relations Committee of the Washington and Oregon Bar Associations be authorized to enter into a joint series of three radio broadcast programs along the lines of the sample one put on by the Washington State Bar Association Committee at the Bellingham Convention, at a cost to the Washington State Bar Association not to exceed $1,200, or two-thirds of the entire cost.

The programs were heard over Stations KOMO, Seattle; KHQ, Spokane, and KGW, Portland. They were entitled the "Law Theatre."

An explanatory letter was sent to each member of the Bar and upon conclusion of these test programs, a referendum was ordered by the Board of Governors, which resulted in a vote as follows:

No, 1052; Yes, 243.

The Oregon Bar Association likewise conducted a referendum which resulted in a vote of three to one against the continuation of such programs.

AMERICAN BAR DELEGATES

American Bar Association has just completed the election for the office of State Delegate in each of the 51 jurisdictions of the United States. Under the A. B. A. Constitution there is one State Delegate from each State or jurisdiction. He acts as chairman of the delegates from his state in the House of Delegates. The State Delegate is elected by mail ballot by the members of the A. B. A. in each state or jurisdiction. The State Delegates meet as a separate body to nominate the general officers of the Association, as well as participating in all meetings of the House of Delegates. A meeting of the State Delegates was held at Washington, D. C., May 11, 1938, but newly elected delegates did not participate, as such. The annual meeting of the A. B. A. will be held at Cleveland, July 25-29.

Guy R. Crump was elected State Delegate for California for three years, receiving 652 votes.

TAX SERVICE ASSOCIATION IN ILLINOIS ENJOINED FROM PRACTICING LAW

THE Tax Service Association of Illinois was enjoined from practicing law by a decree entered April 18, 1938, by Judge Walter T. Stanton of the Superior Court of Cook County on complaint of the Chicago Bar Association.

The Tax Service Association, according to the complaint, was organized as a corporation "not for pecuniary profit." But it was actually created for the purpose of making money out of property owners who were harassed by the muddled tax situation in Cook County, Illinois, brought on by the depression.

Among the services which the Association claimed to have performed for members were, "Attorney's services," "Circuit or Superior Court injunctions," "county enjoined from collecting second half of 1931 tax until legal amount due is determined," "all tax savings by court order to member" and the preparation of personal property tax schedules.

The complaint filed by the Chicago Bar Association prayed "That a permanent injunction may be granted herein restraining and enjoining the defendant, its officers, agents, employees and representatives, from practicing law in any form, either directly or indirectly, or from holding itself out as having a right to practice law or the right to represent others in tax matters in the courts or in preparing or filing schedules pertaining to taxes, or from advertising the fact that it maintains an office for the furnishing of legal services."

BAR LISTS

The American Bar Association has adopted Canon 43, on "Approved Law Lists" which reads as follows:

> "It shall be improper for a lawyer to permit his name to be published after January 1, 1939, in a law list that is not approved by the American Bar Association."

It is understood that the subject of Approved Law Lists will be considered at the May meeting of the Ethics and Grievances Committee of the A. B. A., at Washington, D. C., and that a report may be forthcoming thereafter. In the meantime it is advisable that members of the Association await such approved list before making any commitment.

READ THIS AND PONDER

DURING the year ending October 15, 1937, 1307 applicants were admitted to practice before the Interstate Commerce Commission. Of these 1077 were lawyers and 230 were laymen. The total number of persons who have been admitted before the Commission as of the above date, is 8876, of whom 5087 are lawyers and 3789 are non-members of the Bar.

These figures, furnished by the American Bar Association, should cause lawyers to make careful note of the extent to which the practice of the law is being taken over by non-members of the Bar before administrative tribunals.

BAR GOLF

J. Clifford Argue, with a 72 gross, won low gross at the L. A. Bar Association monthly tournament at Griffith Park, April 15, against a field of 42 lawyers. John C. Harbert was runner-up for low gross honors with a 74, and Floyd Sisk was third low gross with 77.

Low net was won by Hiram E. Casey with a net 70; Kent Redwine second low net with 71, and Norman A. Bailie third low net with 72. Other net prizes, consisting of gold balls, were won by H. A. Decker, P. M. McCloskey, Wm. Mealey, and Richard A. Turner. High gross score was won by Kyle Z. Grainger while the high net went to Victor P. Showers.

The feature event of the day, the driving contest, which was won by Cliff Argue with a 275-yard drive, followed by a 265-yard drive by Bill Mealey, and 262 yards by Hiram E. Casey.

U. S. C. COURSE ON EVIDENCE; BAR ASSOCIATION TO HELP

DURING the summer session at University of Southern California Law School, Prof. Edmund M. Morgan, of Harvard Law School, will teach the course on Evidence. Prof. Morgan is one of the outstanding teachers in the field of Evidence. The course begins Monday, June 13, and the lecture will be given from 8 to 9:30 a. m., Monday to Thursday, inclusive, each week.

On Thursday, June 23, there will be held at U. S. C. Law School, a symposium, on the subject of the hearsay rule and exceptions, in cooperation with the Los Angeles Bar Association. Prof. Morgan will be the key man in the discussion, and it is planned to select several members of the local bench, and prominent members of the Bar, to lead off in the program. The symposium will be followed by the regular monthly meeting and dinner of the members of the Los Angeles Bar Association, at the University.

CURBING UNLAWFUL PRACTICE

FROM month to month BAR BULLETIN will publish court decisions and reviews of bar activities throughout the country to curb unlawful practice of the law. This information is obtained from various authoritative sources, principally from news disseminated by the American Bar Association, which has available a compilation of decisions under the title "Unauthorized Practice Decisions," by George E. Brand.

Following are some of the cases just reported:

Ohio: On March 5th, 1938, in the Court of Common Pleas of Summit County, Ohio, "In the matter of the Petition of Clyde F. Beery and others on behalf of themselves and others associated as members of the Akron Bar Association, etc.," the respondents, Mattie B. Davis, Harry T. Degnon, R. D. Harrold and The Summit Title and Abstract Company, were found to have been engaged in the unauthorized practice of the law by preparing and furnishing certificates or opinions of title.

The respondents and each of them were by the court perpetually enjoined from furnishing opinions in statements of title and otherwise as to the title of real estate, the condition of the title and encumbrances, and from counseling or advising patrons or prospective patrons on legal matters or procedure in litigation or proposed litigation involving title to real estate, and from furnishing opinions in foreclosure certificates or otherwise, stating whether necessary or proper parties have been named as defendants, and from furnishing opinions or certificates of title to be used in the Probate Court for the purpose of ascertaining the necessary or proper parties in land sale proceedings, and from furnishing opinions or certificates of title for filing recognizance bonds and their approval.

New York: In the case of Aberdeen Bindery, Inc., versus Eastern States Printing and Publishing Company, Appellate Term of the Supreme Court, first department, decided March 4th, wherein the president of the defendant corporation had prepared and filed in the lower court the answer and general denial of the defendant, the president not being a lawyer, it was held that the motion to strike the pleading should have been sustained.

The Court speaking through Justice Hammer stated: "A corporation is not permitted to practice law in this State, directly or through agents or employees, and is not authorized by common law, statute or by the State Constitution to appear in civil actions in propria persona; when it appears or acts it must do so through a natural person, and in a court of record, a duly licensed attorney is the only one who may appear or act for a corporation."

Rhode Island: At the fortieth annual meeting of the Rhode Island Bar Association, the State committee on the Unlawful Practice of the Law, reported that it had recommended to the Supreme Court, that a committee be appointed by that court with authority to summon witnesses before it for the purpose of investigating the illegal practice of the law and that the Supreme Court had the matter under advisement.

Michigan: On January first, 1938, Horace W. Webster and Duncan E. Goodwillie, laymen formerly associated with the Tax department of the General Motors Corporation, advertised in certain Detroit papers of the opening of an

office in the General Motors Building in Detroit, and that they would engage in the practice of Tax Consultants throughout the United States and Canada, specializing in Federal, State, Provincial and Municipal Taxation, with correspondents in all principal cities of the United States and Canada, and that they would be associated with Mr. James A. Taylor, an attorney-at-law in Washington, D. C.

On January 27th, 1938, the Detroit Bar Association instituted proceedings in the Circuit Court for Wayne County, to have Webster and Goodwillie adjudged guilty of contempt for having advertised that they were in association with an attorney.

After an institution of the proceedings, the respondents sought a conference with the Bar Association Committee, resulting in an announcement being run by the respondents in the various newspapers wherein the former advertisement had been carried, correcting any impression that might have arisen that they would furnish legal advice, and disclaiming that any legal advise or legal services were obtainable and recognizing that they had no right either to give or furnish legal advice or supply of the services of an attorney at law. The Bar Association thereupon dismissed their petition.

Cleveland: As a result of a series of joint conferences with Joseph L. Stern, chairman of the Committee of The Ohio State Bar Association, and with committees of The Cuyahoga County Bar Association and of The Cleveland Bar Association, an agreement has been reached with The Cleveland Trust Company, by the terms of which it is provided that:

> "the Bank will not perform any escrow unless the Sales Agreement or Escrow Instructions deposited with it contains the necessary escrow conditions to enable the Bank to perform the escrow."

A form of Escrow Receipt to be henceforth used was also agreed upon.

The new agreement ends the use of forms of Escrow Receipts which were claimed by the bar committees to be tantamount to the drafting of escrow instructions or even sales agreements between buyer and seller.

Federal Practice: Henry Ward Beer, President of the Federal Bar Association of New York, New Jersey and Connecticut, in an address before the National Lawyers Guild, in Washington, D. C., urged that all non-lawyers be prevented from practicing before all Commissions and Boards of the Federal Government.

He said, in part:

> "The pity of it all is that despite the terrific shortcomings of these non-lawyers and the enormous harm to the public, they are actually licensed to practice law before Government and State Departments. And they have found in Washington the true mecca for their activities. This Capital is infested with these interlopers, some of whom are not at all reluctant to cash in on the prominence and position of their fathers and relatives."

Missouri: On March 17, 1938, the Bar Association of St. Louis secured a restraining order in the Circuit Court of the City of St. Louis, against Auto-

mobile Owners Protective Association, a Corporation, George E. Maurer, L. A. O'Leary and Charles R. Felton, wherein the defendants, their agents, servants and employees were perpetually enjoined from, advising contract owners as to their legal liability with reference to claims against or for demands against contract holders; adjusting claims against owners of contracts, or in any way practicing law or doing a law business.

Maryland: Nine collection agencies operating and doing business in Baltimore, Maryland, to-wit: Dun & Bradstreet, Inc., Baltimore Association of Credit Men; Brannon, Sanderson & Brown, Bernard & Thorner, Credit Adjustment Corporation of Baltimore, Kuff Mercantile Agency, Retail Merchants Credit Bureau, The House of Adjustments and the Merchants Collection Company, have, following negotiations with the Bar Association of Baltimore City, entered into an agreement and pledged themselves, as follows:

First: To accept and observe the statement of principles issued by the Committee on the Unauthorized Practice of the Law of the American Bar Association on May 4th, 1937.

Second: To observe and follow in the special cases therein outlined and treated of, the recommendations of the special committee of the New York State Association of Collection Agencies, Inc., promulgated by that committee on July 26, 1937, after submission of the same to a special committee of the New York State Bar Association.

Third: That point one of the statement of principles of the Unauthorized Practice of the Law Committee of the American Bar Association shall be construed as prohibiting the solicitation of proofs of debt and powers of attorney from creditors in a bankruptcy estate, whom the agency does not represent.

Fourth: To co-operate with the Bar Association of Baltimore City in seeking of the Legislature of Maryland such amendment or amendments of the existing statutory law of Maryland, as may be necessary or desirable to prohibit by statutes all the practices condemned.

Fifth: That the Bar Association of Baltimore City agrees that it will neither deem nor claim that the carrying on by a collection agency of a practice authorized in the recommendations, constitute the illegal practice of the law, or is otherwise improper.

The agreement was authorized by the Executive Committee of the Bar Association on the report from the Committee on the Unlawful Practice of the Law.

Georgia: On January 27th, 1938, the Clearing House Banks of Savannah, Georgia, adopted an agreement, wherein all members of the Clearing House would refrain from any practices which constitute the practice of the law.

South Dakota: One Franz Wendland in the case of State of South Dakota ex rel Conrad, Mose S. Lindau, intervenor, was enjoined from further engaging in the illegal practice of the law.

Louisiana: One Joseph Johnson, a layman representing himself as "The Charity Hospital Lawyer" was recently found guilty and sentenced to pay a fine or jail sentence, by the Criminal District Court of New Orleans.

Michigan: On January 19th, 1938, the Attorney General of Michigan in an opinion to the Department of Labor and Industry on the question of whether or not a layman could appear before that department in a representative capacity, stated:

> "In conclusion, we may repeat that a person who is not a duly licensed member of the bar cannot represent an individual or a corporation before your Commission; that whether a fee is charged or not is immaterial and that such right to appear by a layman cannot be conferred by rules and regulations of the Commission."

Wisconsin: The Outagamie Loan and Title Company having decided to abandon their appeal from the restraining order issued by the District Court, in the case of State of Wisconsin, ex rel v. Outagamie Loan and Title Co., the restraining order has now become final.

Ohio: On February 21st, 1938, the Court of Common Pleas of Summit County, Ohio, in the case of Clyde F. Berry, et al, versus Milk Producers Association of Summit County and vicinity, rendered an opinion enjoining the Association from contracting to render or rendering legal services for and in behalf of its members.

California: On January 21st, 1938, one Stephen B. Dexter of Los Angeles who had been transacting business under the name of "Heirs' Research and Recovery Bureau" was found guilty of contempt and fined $200.00 on each of thirteen counts.

Connecticut: Mr. John C. Blackall, Insurance Commissioner of the State of Connecticut, recently promulgated a set of rules and regulations governing casualty insurance adjusters, setting forth along the same general line as the recent Missouri decision, just what and how far lay adjusters might go in handling claims for their companies.

Warning! It has come to the attention of the American Bar Association committee on Law Lists, that there are several bogus law lists again in the field preying upon the bar.

The usual method of the approach of these racketeers is to be armed with a well gotten up list that generally is a book of some legitimate list with a changed or altered cover; they will claim to have formerly been with an old recognized list, first attempting to collect the entire charge in advance, then making a special concession for whatever they can get.

Lawyers are urged to be on the lookout for these and unless the party or the list is known to make a careful investigation before parting with their money.

Look Out! It has again been called to the attention of the American Bar Association's committee on the Unauthorized Practice of the Law, that there are again several lay groups operating in the country preying upon heirs to estates.

Their practice is to locate estates of reasonably large value with a number of heirs, then finding that the estate is not likely to be settled soon, will approach some heir that is financially embarrassed or needs immediate money and attempt to purchase the heir's interest at a reduced figure for immediate cash, thereby injecting themselves into an estate and immediately causing trouble and expense to the remaining heirs by bringing partition suits, etc.

Lawyers handling estates should advise their clients to be on the lookout for these racketeers.

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